

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

ROGER COOPER, II, et al.,

Plaintiffs,

v.

Case No. 2:09-cv-00489

TROOPER WELLMAN, et al.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

By Order entered December 7, 2009, the presiding District Judge, the Hon. Joseph R. Goodwin, Chief Judge, granted the motion to withdraw filed by Plaintiffs' attorney, and no new attorney has entered a notice of appearance. By Standing Order, the undersigned is referred actions in which the plaintiff proceeds *pro se*. By Order entered December 11, 2009, the undersigned directed plaintiffs Roger Cooper, II and Faith Cooper to appear for a status conference to take place on Thursday, December 17, 2009, at 3:00 p.m., in Courtroom 5400, Robert C. Byrd United States Courthouse, 300 Virginia Street East, Charleston, WV. The Order was mailed to the plaintiffs' address by both regular mail and certified mail. The regular mailing was not returned by the United States Postal Service. The return receipt was signed by Nancy Chaney on December 15, 2009. Plaintiffs Roger Cooper, II and Faith Cooper did not appear at the status conference on December 17, 2009. The December 11 Order warned the plaintiffs that their

failure to appear on December 17, or to call the undersigned at 304-347-3279, would result in the filing of proposed findings and recommendation that this case be dismissed without prejudice for failure to prosecute.

In light of Roger Cooper, II and Faith Cooper failing to appear and to take any other action indicating an interest in prosecuting this action, the undersigned proposes that the presiding District Judge **FIND** that they have failed to prosecute.

It is respectfully **RECOMMENDED** that this action be dismissed without prejudice for failure to prosecute.

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections), and then three days (service/mailling), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall

constitute a waiver of de novo review by the district court and a waiver of appellate review by the circuit court of appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties and Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation, to mail a copy of the same to Plaintiffs by regular mail and by certified mail, return receipt requested, and to transmit it to counsel of record.

December 23, 2009
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge